

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs July 12, 2007

**TED WARD, ET AL. v. NATIONAL HEALTHCARE CORPORATION,
ET AL.**

**Appeal from the Circuit Court for Rutherford County
No. 53625 Robert E. Corlew, Judge**

No. M2007-00231-COA-R9-CV - Filed November 15, 2007

In this interlocutory appeal, four corporate defendants contest the trial court's ruling that Rutherford County is the proper venue. The defendants contend Knox County is the proper venue because a material defendant has its principal office in Knox County and the decedent, whose alleged injuries while a resident of a nursing home are the basis of this action, resided in the Knox County defendant's nursing home when the alleged injuries occurred. The trial court stated that its reason for denying the motion was that the Knox County defendant was not the "significant defendant." We have determined the trial court applied an erroneous legal standard in reaching its decision because the Knox County defendant need not be the "significant defendant," only a "material defendant," and the Knox County defendant is a material defendant. The decedent was a resident of Knox County, residing in the Knox County defendant's nursing home when the alleged injuries occurred; accordingly, venue lies in Knox County. We therefore reverse the ruling of the trial court and remand with instructions to transfer the action to Knox County.

Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Circuit Court Reversed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, J., joined. WILLIAM B. CAIN, P.J., M.S., not participating.

F. Michael Fitzpatrick and Dan D. Rhea, Knoxville, Tennessee, for the appellants, National Healthcare Corporation f/k/a National Health Corporation, HNC/Delaware, Inc., NHC, Inc., National Healthcare/Knoxville, LLC, d/b/a NHC Healthcare, Knoxville.

M. Chad Trammell and S. Drake Martin, Jackson, Tennessee, and Brian G. Brooks, Greenbrier, Arkansas, for the appellees, Ted Ward and Linda Davis, as Co-Administrators Ad Litem of the Estate of Clifford Ward, deceased.

OPINION

This is a wrongful death action brought by the co-administrators *ad litem* of the Estate of Clifford Ward ("the decedent"). The decedent resided in a nursing home in Knox County during the last months of his life. In the complaint, the plaintiffs allege that four related businesses, each of

which have a direct or indirect business interest or connection with the nursing home, are liable for the injuries sustained by the decedent while a resident of the Knox County nursing home.

The four defendants are National Healthcare Corporation; NHC/Delaware, Inc.; NHC, Inc.; and National Healthcare/Knoxville, LLC, (collectively the “defendants”). In the complaint, the plaintiffs alleged that the defendants were joint venturers with an equal right to share in the control and operation of the Knoxville nursing home. Further, they allege that Clifford Ward suffered injuries and harm, including death, while in the care of that nursing home.

The complaint was filed in the Rutherford County Circuit Court. The defendants, in response to complaint, filed a motion to dismiss the complaint for improper venue, contending that Knox County was the proper venue. In support of their motion, the defendants alleged that NHC Healthcare/Knoxville, LLC (“the Knoxville LLC”) was the nursing home operator and a principal defendant. In support of the motion, the defendants provided certified copies of public records to establish that the plaintiffs reside in Knox County, the decedent resided in the nursing home in Knox County at the time of his death, and the Knoxville LLC is a corporate resident of Knox County. It is upon these facts the defendants contend that Knox County, not Rutherford County, is the proper venue for this action.

The plaintiffs opposed the motion by contending that the Knoxville LLC is not a resident of Knox County, but instead is a Rutherford County resident. They also contend that the cause of action arose in Rutherford County. In support of the argument that the Knoxville LLC resides in Rutherford County, the plaintiffs claim that the Knoxville LLC’s filing with the Tennessee Secretary of State lists the place of “incorporation/organization” as in Rutherford County and that LLC’s articles of organization list the registered agent and office as in Rutherford County. As for the contentions that the cause of action “arose” in Rutherford County, the plaintiffs contend National Healthcare Corporation made all decisions regarding the allocation of resources and staffing for the Knoxville nursing home at the corporate level in its Rutherford County offices, and therefore, the tortious conduct began in Rutherford County and the cause of action “arose” there.

The trial court denied the defendants’ motion to dismiss for improper venue after making several significant findings. First, the trial court found that “this action did arise in Knox County.” Second, the court found that “the LLC resides in Knoxville.” The trial court went on to find that the other three defendants all reside in Rutherford County.

Having made the foregoing findings, the trial court went on to state that the question was “whether we should allow the suit against these same entities to go forward here, but not the suit against [the Knoxville LLC] or alternatively, I suppose, whether we should dismiss the entire action and require the whole thing to be filed in Knoxville.” Further, the trial court stated that “I don’t see how I can determine that the principal defendant is [the Knoxville LLC] . . . if it further develops that, in fact, [the Knoxville LLC] is demonstrated to be the significant defendant, I would be pleased to look at the matter again.” Finally, the trial court stated its conclusion and ruling:

Thus I agree with counsel for the defense that the cause of action is not [Rutherford County]. Nonetheless, given the residence of these – these three defendants here

locally, it appears . . . the suit against them should be maintained here, and in the interest of judicial economy, then join the fourth defendant in and try the case all here.

The defendants then filed a motion for leave to take an interlocutory appeal from the trial court's denial, which the trial court and this court granted.

ANALYSIS

Tennessee Code Annotated section 20-4-101 governs venue in cases such as this. The statute provides in pertinent part:

(a) In all civil actions of a transitory nature, unless venue is otherwise expressly provided for, the action may be brought in the county where the cause of action arose or in the county where the defendant resides or is found.

(b) *If, however, the plaintiff and defendant both reside in the same county in this state, then such action shall be brought either in the county where the cause of action arose or in the county of their residence.*

Tenn. Code Ann. § 20-4-101 (emphasis added). Subsection (b) does not expressly address the circumstance where there are multiple defendants and some of the defendants reside in the same county as the plaintiff and some do not, or some of the defendants reside in the county where the cause of action arose and others do not. Our Supreme Court, however, has applied Tenn. Code Ann. § 20-4-101(b) where the plaintiff and one of several defendants resided in the same county and the cause of action also arose in that county, *Winters v. Healthtrust, Inc.*, 836 S.W.2d 584, 585 (Tenn. Ct. App. 1992) (citing *Tims v. Carter*, 241 S.W.2d 501 (Tenn. 1951)), so long as one of the defendants is “*a material defendant.*” *Tims*, 241 S.W.2d at 503 (emphasis added).

Based upon Tenn. Code Ann. § 20-4-101(b) and the holdings in *Winters* and *Tims*, the Knoxville LLC need only be a material defendant, not a “principal” or “significant” defendant, for Knox County to be the proper venue. *See Winters*, 836 S.W.2d at 585; *Tims*, 241 S.W.2d at 503. The trial court made the determination that the defendant Knoxville LLC “resides in Knoxville.” This finding is supported by the defendant’s filings with the Secretary of State that listed its principal address as being in Knoxville, Tennessee, which is in Knox County. The evidence in the record fully supports the finding that Knox County is the principal place of business for the Knoxville LLC. It is well-settled for purposes of venue that the residence of a commercial enterprise is its principal place of business or its principal office. *See Skaggs v. Tennessee Cent. Ry. Co.*, 246 S.W.2d 55, 55 (Tenn. 1952).

The plaintiffs’ base their cause of action on the injuries allegedly sustained by the decedent while he was a resident in the Knoxville nursing home owned and/or operated by the defendants. The nursing home is located in Knox County, the decedent resided in this nursing home exclusively in Knox County, and the injuries allegedly sustained by the decedent all occurred in Knox County. Therefore, the cause of action arose in Knox County.

The record also shows that the Knoxville LLC is the defendant that holds the nursing home license issued by the Department of Health. Under Tenn. Code Ann. § 68-11-204, a business is required to have this license to lawfully operate and maintain a nursing home. Because the alleged injuries occurred while the decedent was a resident in a nursing home, it is more than evident that the entity holding the license to operate and maintain a nursing home, here the Knoxville LLC, is a “material defendant.”

The venue provision in Tenn. Code Ann. § 20-4-101(b) is mandatory in transitory actions such as this one. *See Mills v. Wong*, 39 S.W.3d 188, 190 (Tenn. Ct. App. 2000). Because the plaintiffs and a material defendant, the Knoxville LLC, reside in Knox County, and the cause of action arose in Knox County, it is mandatory that the action be maintained in a court of competent jurisdiction in Knox County. Moreover, Knox County is the exclusive venue for all parties to this action. *See* Tenn. R. Civ. P. 20.01.

Having determined that venue lies in Knox County, not Rutherford County where the civil action was commenced, we have also determined that it is in the interest of justice that this case not be dismissed, but instead, be transferred pursuant to Tenn. Code Ann. § 16-1-116 to the Circuit Court for Knox County.

IN CONCLUSION

For the foregoing reasons, we reverse the decision of the trial court and remand with instructions to transfer the case to the Circuit Court for Knox County pursuant to Tenn. Code Ann. § 16-1-116. Costs of this appeal are assessed against the plaintiffs.

FRANK G. CLEMENT, JR., JUDGE